

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SKEET DUNN,

Plaintiff,

-against-

CARL DuBOIS sued in his official and
individual capacities,

Defendant.

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ANSWER TO AMENDED
COMPLAINT

Case #: 08 CIV. 1846

Defendant, CARL DuBOIS sued in his official and individual capacities, by his attorney, DAVID L. DARWIN, County Attorney of Orange County, answering the complaint of the plaintiff herein, respectfully shows to the court and alleges upon information and belief:

1. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated or contained in paragraphs "1," "14," "19," and "20."

2. Denies the allegations stated or contained in paragraph "3," and refers all questions of law to the court.

3. Denies the allegations stated or contained in paragraphs "5," "7," "9," "10," "11," "13," "15," "16," "17," "18," "23," "24," "25," "26," "28," "29," "30," and "31."

4. Denies the allegations as stated in paragraph "6," but admits that disciplinary charges were levied against plaintiff in 2004.

5. Denies the allegations as stated in paragraphs "8," "21," "22" and "27."

6. Denies the allegations as stated in paragraph “12,” but admits that an arbitrator rendered a decision in November, 2007.

AS TO THE CAUSE OF ACTION

7. As to paragraph numbered “32,” defendant repeats and realleges each and every response to the allegations stated or contained in paragraphs numbered “1” through “31” inclusive, with the same force and effect as though more fully set forth at length herein.

8. Denies the allegations stated or contained in paragraph “33.”

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

9. The complaint fails to state a claim against defendant upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

10. The defendant is entitled to qualified immunity.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

11. The defendant is entitled to absolute immunity.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

12. Plaintiff has failed to mitigate damages.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

13. Plaintiff has not sustained any adverse effects of employment.

AS AND FOR SIXTH AFFIRMATIVE DEFENSE

14. Upon information and belief, any injuries and/or damages which may have been sustained by the plaintiff at the time and place set forth in the complaint were caused, in whole or in part, by reason of the plaintiff’s own culpable conduct and actions.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

15. If the defendant is held liable and responsible, in whole or in part, for damages and injuries as alleged in the complaint, it will be a result of the culpable conduct of others and the defendant demands that the ultimate rights of the parties hereto be apportioned through indemnification or contribution as determined by the Court or Jury.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

16. The acts of the defendant were done in good faith, without malice, wantonness, recklessness, callous or indifference.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

17. If plaintiff was damaged or injured as alleged in the Complaint herein, and such damage and injury was not sustained solely as a result of plaintiff's own negligence, carelessness, culpable conduct, or want of care, then same was brought about by reason of the negligence, carelessness, culpable conduct, want of care and intentional acts of third parties.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

18. Any non-federal claims that may be asserted by plaintiff through any supplemental jurisdiction of this Court, are barred by the failure of plaintiff to comply with the requisite notice provisions of such claims and are further barred by the applicable statute of limitations.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

19. Defendant, Sheriff DuBois cannot be held liable under the doctrine of respondent superior.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

20. Plaintiff has failed to allege personal involvement as to the defendant.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

21. At all times alleged by plaintiff, defendant acted within the scope of his discretionary authority and in good faith.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

22. The alleged deprivation of plaintiff's constitutional rights was not done pursuant to a governmental custom, policy, practice, ordinance, regulation or decision of defendant.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

23. Upon information and belief, this action is barred by the applicable statute of limitations.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

24. Plaintiff did not engage in action protected by the First Amendment of the U.S. Constitution.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

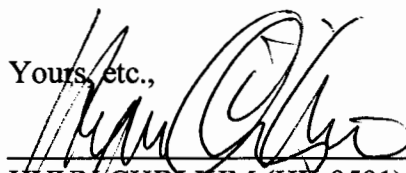
25. Plaintiff's association with his mother or his mother's alleged actions were not a substantial motivating factor in any employment action taken by defendant.

WHEREFORE, the defendant, CARL E. DuBOIS, demands judgment:

- (1) dismissing the complaint herein;
- (2) for its costs and disbursements; and
- (3) for such other and further relief this Court deems just.

Dated: May 20, 2008
Goshen, New York

Yours, etc.,



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